

## **Standard Terms & Conditions**

### **GENERAL CONDITIONS OF SALE**

ANY AND ALL ORDERS ARISING FROM THIS QUOTATION/PROPOSAL WILL ONLY BE ACCEPTED SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN:

Acceptance by Beaver Electrical Machinery Ltd. (hereinafter referred to as the "Company") of any order, verbal or written, of the buyer (hereinafter referred to as the "Customer"), for the manufacture and/or sale of any goods or the rendering of any services, including any purchase order prepared and submitted by the Customer to the Company, is expressly subject to the terms and conditions included with this Quotation/Proposal, together with any other written documents which may be incorporated by specific reference (hereinafter referred to as the "Terms and Conditions").

The Customer will be deemed to have consented to and accepted these Terms and Conditions upon receipt of this Quotation/Proposal, with the Terms and Conditions attached; or upon receipt by the Company of any order from the Customer, pursuant to this Quotation/ Proposal - or any portion thereof.

#### **1. ENTIRE AGREEMENT**

This Quotation/Proposal is open for acceptance for 30 days only. If accepted, the Terms and Conditions herein shall constitute the entire agreement between the parties. There are no other agreements or understandings, either written or oral, to conflict with, alter, or enlarge this agreement - unless agreed to in writing between the parties, subsequent to the date of acceptance of the Quotation/Proposal. Any terms and conditions contained in any purchase order or other document or communication sent by the Customer to the Company which are additional to or different from these Terms and Conditions shall be deemed rejected by the Company, unless expressly accepted in writing by the Company. In general, no modification, alteration, waiver or change of any kind whatsoever of these Terms and Conditions, or any of the Company's rights or remedies thereunder, shall be binding on the Company unless expressly accepted in writing by an authorized employee or agent of the Company. Acceptance of any order by the Company is subject to approval of the Customer's credit by the Company. Notwithstanding such acceptance and/or approval, if in the Company's judgment the Customer's financial condition does not at any time warrant the continuation on the original terms, the Company reserves the right to request payment in advance.

#### **2. DELAYS OR FORCE MAJEURE**

The Company shall not be responsible or liable for any loss, damage, detention, or delay as a result of the Company's delay in or failure of delivery, installation or provision of goods or services due to (without limiting the following) any cause beyond the Company's reasonable control, including any act of God, act of the Customer, embargo or other governmental act, authority, regulation, fire, flood, explosion, war, riot, insurrection, strike or other labour disturbance, delay in usual means of transportation, or inability to obtain necessary labour or materials. In the event any force majeure occurs, the Company may, at its option, cancel the Customer's order, in which case the Company shall be released from all obligations and liability for failure to deliver goods so ordered, or failure to provide services, including, but not limited to, any and all claims on behalf of the Customer for lost profits. Receipt by the Customer of any product or service shall constitute a waiver of all claims for loss or damage due to delay.

#### **3. TERMS OF PAYMENT**

The prices quoted are based on Government taxes or regulations in force at the date of this Quotation/ Proposal, and such prices are subject to increase or decrease in accordance with any changes in taxes or regulations made prior to the delivery of the product and/or service. All prices in this Quotation/Proposal are quoted exclusive of all taxes; these will be added to any Invoice arising from this Quotation/Proposal, at the rates in force at the date of shipment. All payments shall be made in Canadian dollars, unless expressly agreed otherwise within this Quotation/ Proposal. Terms of payment shall be net 30 days, from the date of any Invoice arising from this Quotation/Proposal. The Company reserves the right to require payment or part payment prior to shipment of the goods or prior to the services being performed. **Interest at a rate of 2% per month (24% per annum) will be charged on all overdue payments.** In case partial shipments are made at different times, pro-rata payments shall be made therefor. If shipments of the goods/services herein specified, or any material part thereof, are delayed from any cause for which the Customer is directly or indirectly responsible, the date of completion of the goods/services by the Company or their supplier shall be regarded as the date of shipment in determining when payments for said goods/services are to be made. The Customer, in such event, shall hold the Company harmless from any costs associated with storing the completed product, which shall be held at the Customer's risk. The Customer agrees that should any of the payments not be made to the Company when due under the terms of this Quotation/Proposal, then a service charge on such overdue payments (plus interest, as noted above) shall be billed by the Company and paid by the Customer, until the price including interest and service charges has been fully paid - but this shall not be construed as obligating the Company to grant any extension of time in the terms of payment. The minimum billing on any Invoice arising from this Quotation/Proposal shall be \$25.00.

#### **4. DELIVERY AND RISK OF LOSS**

Unless otherwise expressly agreed in writing, all deliveries of any goods arising from this Quotation/Proposal will be made by the Company ex works, or by the Company's suppliers ex works. In other words, unless otherwise stated in this Quotation/Proposal, and expressly agreed to in writing, the Company will make available the goods at its or its supplier's premises to the Customer, and is not responsible for any costs or risks from the time the goods are made available to the Customer, including any delivery costs - including (but not limited to) non-standard packaging, storage prior to shipment after making the goods available, vehicle loading, unloading, or clearing the goods for export. The Customer bears all costs and risks involved in taking the goods from the Company's (or our supplier's) premises to the destination. Claims for shortages or other errors in delivery must be made in writing to the Company within 7 days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Customer. Claims for loss or damage to goods in transit by common carrier must be made to the carrier and not to the Company. Any delivery dates herein specified are subject to prior sale of the Company's or the Company's supplier's manufacturing and engineering space, or job planning time; and to the receipt of all the information necessary to allow maintenance of our engineering, manufacturing, and/or job planning schedules.

# Beaver Electrical Machinery Ltd

## 5. DUTIES AND BROKERAGE FEES

Unless otherwise stated in this Quotation/Proposal, and expressly agreed to in writing, customs duties and brokerage fees shall be borne by Customer.

## 6. WARRANTY

THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN RESPECT TO ANY OF THE GOODS OR SERVICES COVERED BY THIS QUOTATION/ PROPOSAL EXCEPT AS EXPRESSLY STATED HEREIN.

Where the good or service sold by the Company has been manufactured or rendered by the Company, the Company warrants the goods or services supplied hereunder to be of the kind designated by the Company; and unless otherwise expressly agreed in writing, the Company will arrange for the repair or replacement of any such defective part or parts, which prove to be defective under normal and proper use within one year from the date of shipment, and receipt by the customer of the goods or services is acceptance thereof- subject to the Company receiving written notice of any defect claim within 7 days after such defect was first discovered, or by reasonable care ought to have been discovered, by the Customer; and subject to said defect or defects being proven to the Company's satisfaction. The Company's sole obligation and the Customer's sole remedy under this warranty shall be limited to such repair or replacement. The Customer will be liable for all transportation costs in transporting the defective goods to and from the Company's premises or other point designated by the Company. On expiration of the Warranty period, any liability of the Company shall terminate. Where the good or service sold by the Company is not manufactured or rendered by the Company, the Company warrants only to the extent the supplier agrees to extend its warranty to the Customer. The applicable Warranty expressed in this paragraph constitutes the only Warranty of the Company, and no other warranty or conditions, statutory or otherwise, shall be implied. The Customer acknowledges that it is not relying on the Company's skill and judgment in selecting the goods or services covered hereunder for the Customer's particular use.

THE WARRANTIES PROVIDED HEREIN AND THE OBLIGATIONS OF THE COMPANY THEREUNDER ARE IN LIEU OF, AND THE CUSTOMER HEREBY WAIVES, ALL OTHER WARRANTIES, CONDITIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WHETHER OR NOT OCCASIONED BY THE COMPANY'S NEGLIGENCE.

## 7. LIMITATION OF LIABILITY - CONSEQUENTIAL DAMAGES

The Company's liability in the event of goods proved to its satisfaction to be defective within the warranty period stated herein shall be limited to repair, replacement or refund of the defective goods only as provided for in Clause 6 hereof, and in no event shall the Company's liability exceed the original unit purchase price of the goods involved.

Notwithstanding any other provision in this Agreement or any applicable statutory provision, the Company shall not be liable to the Customer for special or consequential damages or damages for loss of use arising directly or indirectly from any breach of this Agreement, fundamental or otherwise, or from any tortious acts or omissions of employees or agents of the Company; and in no event shall the liability of the Company exceed the unit price of the defective product, part or service, or of the product, part or service subject to late delivery. The Company specifically disclaims any liability for property or personal injury damages, damages for lost profits or revenues or for any other types of economic loss. The provisions of this article, and of all other sections of this Agreement providing for limitation of or protection against liability of the Company, shall also protect its direct and indirect suppliers and its subcontractors and shall apply to the full extent permitted by law and shall survive the termination, cancellation, or expiration of this Agreement. In the event any product, part, or service sold by the Company hereunder is the subject of a resale by the Customer, the Customer agrees to bind his customer to provisions limiting the liability of the Company and its suppliers and subcontractors, which are the same as the corresponding provisions of this Agreement; and the Customer shall indemnify and save harmless the Company from any claims, loss, or damage arising directly or indirectly from the Customer's failure to do so.

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN OR ANY APPLICABLE STATUTORY PROVISIONS, THE COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR DAMAGES FOR LOSS OF USE ARISING DIRECTLY OR INDIRECTLY FROM ANY DEFECTIVE GOODS OR SERVICES RENDERED BY THE COMPANY.

## 8. ASSIGNMENT, TITLE, AND SECURITY INTEREST

The Customer shall not assign any of its rights with respect to the goods or services ordered under this Quotation/Proposal, without the Company's prior written approval.

The title to the goods or any part thereof shall remain in the Company, and only pass from the Company to the Customer as soon as all payments due have been fully made. As security for payment and satisfaction of the outstanding obligations hereunder, the Customer hereby grants the Company a purchase money security interest in and to the goods and/or services that are the subject of this Quotation/Proposal, as more specifically identified therein, or any invoice or other such document identifying the same. The said goods shall be and remain personal property notwithstanding its mode of attachment to realty or other property.

Time is of the essence of the Customer's obligations hereunder. All or any of the following constitutes a default by the Customer: (a) the Customer defaults on payment to the Company, or in complying with any of the covenants or conditions contained herein, or any other instrument, agreement, or note in favour of the Company; (b) the Customer dies, if an individual, or if a corporation or partnership, ceases to carry on business or takes steps to wind-up or close its business; (c) a demand or assignment is made against the Customer, or a proceeding for bankruptcy, receivership, winding-up, or insolvency is instituted by or against the Customer, or the goods or services subject hereof; (d) an execution, attachment, or Writ is levied upon any of the goods or services the subject hereof, or any part of such goods or services is confiscated or misused; (e) the Company deems itself insecure, or decides the goods or services the subject hereof are in jeopardy, and that the Company has commercially reasonable grounds to believe that the prospect of payment or performance is about to be impaired, or that the goods or services are about to be placed in jeopardy; and in event of such a default by the Customer in all or any of the manners stated above, the Company has the right to all remedies referred to herein and, without restricting the generality of the foregoing, the right to accelerate the full amount of the Customer's indebtedness to the Company, which full amount shall, at the election of the Company (notice of which election is waived by the Customer)

## Beaver Electrical Machinery Ltd

be immediately due and payable. On default, and at any time thereafter, the Company may proceed to enforce payment and exercise any of its rights and remedies of a secured party as provided for in the *Personal Property Security Act* (British Columbia), as well as any and all other rights and remedies possessed by a secured party including, without restricting the generality of the foregoing, retaining any partial payments which have been made as liquidated damages; or, for the purposes of removal and possession of the goods or services, the Company may enter, forcibly or otherwise, any premises where the goods or services are or where the Company believes them to be, without prejudice to the Company's right to recover any further expenses or damages that it may suffer by reason of such default including payment of any deficiency. Notwithstanding the terms hereof, risk will pass to the Customer at point of delivery.

### 9. GOVERNING LAW

The laws of the Province of British Columbia shall apply to and govern the validity, interpretation and enforcement of this Quotation/Proposal, and any proceeding taken by Company in respect thereof may be taken in the courts of the Province of British Columbia and the Customer agrees to attorn thereto.

### 10. COPY OF AGREEMENT AND WAIVER

The Customer acknowledges having received a duplicate executed copy of this Quotation/Proposal on the date of its execution. The Customer waives all right to receive from the Company a copy of any Financing Statement, Financing Change Statement, or a Verification Statement filed, issued, or obtained at any time in respect of this Quotation/Proposal.

### 11. APPLICATION

The *International Sale of Goods Act* (British Columbia) does not apply to this Quotation/Proposal. The International Chamber of Commerce Incoterms terms (Publication No. 460) applies to this Quotation/Proposal.  
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